

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000576-001 DT

10/30/2009

HONORABLE ROBERT C. HOUSER

CLERK OF THE COURT
T. Melius
Deputy

STATE OF ARIZONA

NATHAN J WATTS

v.

JESUS GALARZA (001)

KERRIE M DROBAN

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

Lower Court Case No.: 13827734-01, 02, 03, 04, 05

The Superior Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A).

On October 10, 2008, Appellant Jesus Galarza was stopped as a suspect regarding a theft from a 7-11 store. Subsequently, Appellant was arrested and cited for violating A.R.S. §§: 28-1381(A)(1) (impaired to the slightest degree); 28-1381(A)(2) (BAC of 0.08 or more within two hours of driving); 4-251(A)(2) open container of alcohol in vehicle); 28-4135(C) (no proof of insurance); and 28-448(A) (failure to report address change for registration).

On February 17, 2009, Appellant filed a motion to suppress evidence on the grounds that the traffic stop violated Appellant's rights under the U.S. and Arizona Constitutions. The trial court held an evidentiary hearing and denied the Motion. Thereafter, Appellant submitted the issue of his guilt or innocence to the trial judge based upon the stipulated record. Appellant was found guilty of the DUI and open container offenses, and not responsible for the A.R.S. § 28-448(A) violation. The trial court dismissed the A.R.S. § 28-4135(C) charge with prejudice.

A trial court's ruling on a motion to suppress will not be reversed on appeal absent clear and manifest error. *State v. Gulbrandson*, 184 Ariz. 46, 57, 906 P.2d 579, 590 (1995); *State v.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000576-001 DT

10/30/2009

Rosengren, 199 Ariz. 112, 115-16, 14 P.3d 303, 306-307 (App. 2000). A lower court's ruling on the legality of a traffic stop presents the appellate court with a mixed question of law and fact. *State Gonzalez-Gutierrez*, 187 Ariz. 116, 119, 927 P.2d 776, 779 (1996). The appellate court views the facts in the light most favorable to sustaining the trial court's ruling. *State v. Stanley*, 167 Ariz. 519, 525, 809 P.2d 944, 950 (1991); *State v. Swanson*, 172 Ariz. 579, 582, 838 P.2d 1340, 1343 (App. 1992).¹ The credibility of witnesses is for the trier of fact not the appellate court. *State v. Gallagher*, 169 Ariz. 202, 203, 818 P.2d 187, 188 (App. 1991); *State v. Gonzalez-Gutierrez*, 187 Ariz. at 119, 927 P. 2d at 779. Additionally, an appellate court defers to the trial court's factual findings that are supported by the record and not clearly erroneous. *State v. Teagle*, 217 Ariz. 17, 22, ¶ 19, 170 P.3d 266, 271 (App. 2007); *State v. Rosengren*, 199 Ariz. at 116, 14 P.3d at 307. This court, however, is not bound by the trial court's legal conclusions, which are reviewed *de novo*. *State v. Rosengren*, 199 Ariz. at 116, 14 P.3d at 30; *State v. Valenzuela*, 182 Ariz. 632, 898 P.2d 1010 (1995); *State v. Gonzalez-Gutierrez*, 187 Ariz. at 119, 927 P.2d at 779.

Law enforcement officers are only required to have a reasonable, articulable suspicion of criminal activity or civil traffic violations, not probable cause, before making an investigatory stop. *Tornabene v. Bonine, ex rel. Arizona Highway Dept.*, 203 Ariz. 326, 336, ¶ 27, 54 P.3d 355, 365 (App. 2002). Pursuant to A.R.S. § 28-1594, a police officer may stop and detain a person as is reasonably necessary to investigate an actual *or suspected* violation of Title 28. Thus, the issue at the suppression hearing is not whether Appellant was *in fact* responsible for the civil traffic violation that gave rise to the stop. Instead, the relevant question is whether the officer reasonably suspected that Appellant had violated Title 28 in any manner. Courts must view the facts through the eyes of the trained law enforcement officer. *United States v. Cortez*, 449 U.S. 411, 418 (1981); *State v. Teagle*, 217 Ariz. at 24, ¶ 26, 170 P.3d at 273. Founded suspicion can be based on inferences drawn from innocent-appearing facts by experienced officers. *Id.* The court must consider the totality of the circumstances in assessing the reasonableness of the suspicion that prompted the stop. *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Cortez*, 449 U.S. at 417; *United States v. Arvizu*, 534 U.S. 266 (2002); *State v. Teagle*, 217 Ariz. at 17, ¶ 26, 170 P.3d at 273.²

“By definition, reasonable suspicion is something short of probable cause.” *State v. O'Meara*, 198 Ariz. 294, 296, 9 P.3d 325, 327 (2000). Although reasonable suspicion must be more than an inchoate “hunch,” the Fourth Amendment only requires that police officers articulate some minimal, objective justification for an investigatory detention. *State v. Teagle*, 217 Ariz. at 24, ¶ 25, 170 P.3d at 273, *citing United States v. Sokolow*, 490 U.S. 1, 7

¹ The State's burden of proof on a pretrial motion to suppress is a preponderance of the evidence. Ariz.R.Crim.P. 16.2.

² The reasonableness of a vehicular stop does not depend on whether the traffic infractions are designated as civil or criminal. *State v. Boudette*, 164 Ariz. 180, 791 P.2d 1063 (App. 1990).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000576-001 DT

10/30/2009

(1989)(noting that reasonable suspicion represents “a minimal level of objective justification” that is “considerably less proof of wrongdoing by a preponderance of the evidence”).

At approximately 3:00 a.m., Officers Turley and Contreras of the Phoenix Police Department received a dispatch concerning a theft from a 7-11 store.³ The complainant reported that the suspect’s vehicle – “a newer model red pickup”⁴ – was traveling northbound on 51st Avenue from McDowell Road.⁵ Officer Munalem, also of the Phoenix Police Department, radioed Officers Turley and Contreras and reported that he observed a red Nissan pickup traveling westbound in the area of 75th Avenue and West Thomas Road.⁶ Appellant was driving a 2002 Nissan pickup.⁷ Officer Munalem made the stop at approximately 3:10 a.m.⁸ Officers Contreras and Turley immediately drove to the scene and assisted Officer Munalem. Officer Turley testified that it takes approximately 5 to 10 minutes to travel from 51st Avenue and McDowell Road to 75th Avenue and Thomas Road.⁹ Officer Turley believed that the red truck driven by Appellant was the truck related to the alleged theft because, “a red pickup truck was located in the vicinity. And the distance of where the vehicle was located is a feasible distance for a vehicle to travel in the matter of time it took for officers to respond, gather information, locate a vehicle and conduct a traffic stop.”¹⁰

The trial court is in the best position to assess the credibility of witnesses. *State v. Gallagher*, 169 Ariz. at 203, 818 P.2d at 188. The court here weighed the evidence and clearly found the officers’ testimony to be credible. This court will not substitute its judgment for that of the trial court. There was substantial evidence from which the trial court could find that the officer had a reasonable suspicion that Appellant was the suspect in the alleged theft. The trial court did not err when it denied Appellant’s Motion to suppress.

Now, therefore,

IT IS ORDERED affirming the judgment of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

³ Transcript of the March 10, 2009 evidentiary hearing, p. 7, ll. 11-23.

⁴ *Id.* at 4, ll. 1-11.

⁵ *Id.*, ll. 12-15.

⁶ *Id.* at p. 4, l. 16 to p. 5, l. 4.

⁷ *Id.* at p. 6, ll. 3-5.

⁸ *Id.* at p. 8, ll. 3-5.

⁹ *Id.* at p. 9, ll. 1-14.

¹⁰ *Id.* at p. 10, ll. 12-24.